

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARK J GOSSETT,

Case No. 3:24-cv-05501-TMC

Petitioner,

**ORDER DENYING MOTION FOR RELIEF
FROM JUDGMENT**

V.

JASON BENNETT,

Respondent.

I. ORDER

Before the Court is Petitioner Mark J. Gossett's motion for relief from judgment. Dkt. 17.

After reviewing the motion and the remaining record, the Court DENIES the motion.

On August 13, 2024, the Court dismissed Mr. Gossett's federal habeas petition without prejudice in its order adopting the Report and Recommendation of U.S. Magistrate Judge David W. Christel. Dkt. 15. The Court agreed with Judge Christel that Mr. Gossett's petition should be dismissed without prejudice for lack of jurisdiction as a second or successive petition. *Id.* at 2.

The Court entered judgment the same day. Dkt. 16.

Mr. Gossett has now moved for relief under Federal Rule of Civil Procedure 60(b)(4), which allows the Court to grant relief from a final judgment if “the judgment is void.” Mr. Gossett argues that the judgment is void because, although he “sought relief under 28 U.S.C.

1 § 2241,” the Court “recharacterized his pro se petition as a 28 U.S.C. § 2254 petition subjecting
2 him to the restrictions of 28 U.S.C. § 2244(b).” Dkt. 17 at 2. This argument is unpersuasive.
3
4 Because Mr. Gossett is in custody pursuant to a state court judgment, the Court was required to
5 construe his habeas petition as one filed under 28 U.S.C. § 2254. “Because § 2254 limits the
6 general grant of habeas relief under § 2241, it ‘is the exclusive vehicle for a habeas petition by a
7 state prisoner in custody pursuant to a state court judgment, even when the petitioner is not
8 challenging his underlying state court conviction.’” *Dominguez v. Kernan*, 906 F.3d 1127, 1135
9 (9th Cir. 2018) (quoting *White v. Lambert*, 370 F.3d 1002, 1009 (9th Cir. 2004)).

II. CONCLUSION

10 For the reasons explained above, the Court DENIES the motion for relief from judgment
11 (Dkt. 17). The Court also DENIES a certificate of appealability.

12 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
13 to any party appearing pro se at said party's last known address.

Dated this 27th day of September, 2024.



Tiffany M. Cartwright
United States District Judge